

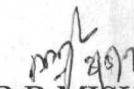
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.571 of 2006
Cuttack, this the 3rd day of May, 2007.

Mr. N.C.Gochhayat ... Applicant
Versus
Union of India and Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?. NO.


(B.B. MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 571 of 2006
Cuttack, this the 3rd day of May,2007

C O R A M:

THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Shri Nakul Charan Gochhayat, aged about 59 years, son of late Dinabandhu Gochhayat, a permanent resident of Village Alana-I, Post: Alanahat, Dist.Naugaon, Dist. Jagatsinghpur, working as Assistant Director (Retd.) in Small Industries Service Institute, Government of India, Bikash Sadan, College Square, Cuttack.

..... Applicant

By legal practitioner: Mr.D.K. Mohanty, Advocate.

-Versus-

1. Union of India represented through its Secretary to Government of India, Ministry of Small Scale Industries, Udyog Bhawan, New Delhi-110 011.
2. The Development Commissioner, Small Scale Industries, Government of India, Nirman Bhawan (7th floor), Maulana Azad Road, New Delhi-110 011.
3. The Director, Small Industries Service Institute, Governemnt of India, Ministry of Small Scale Industries, Bikash Sadan, College Square, Cuttack-753 003 (Orissa).

....Respondents.

By legal practitioner: Mr.P.R.J.Dash, ASC,

O R D E R

MR.B.B.MISHRA, MEMBER(A):

The Applicant, in this second round of litigation filed under section 19 of the Administrative Tribunals Act, 1985 challenges the letter No.3085-86/C-18013 (12)/06 dated 30.06.2006 of the Respondent No.2

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rejecting his prayer for alteration of his date of birth from 21-12-1945 to 21.04.1948 calling the same to be illegal, arbitrary and being without application of mind.

2. Respondents have filed their counter stating that since the Applicant raised his prayer for change of his date of birth at the fag end of his service, the same was rightly rejected. No rejoinder has been filed by the Applicant.

3. Heard Learned Counsel for both sides and went through the records produced before me.

4. It appears from the record that based on the recorded date of birth in service record of Applicant (i.e. '21.04.1948'), he was made to retire from the service of the SISI with effect from 31.12.2005. Also It is not in dispute that just little prior to his date of impending retirement, he raised his grievance that his date of birth recorded in his Service Book is wrong and the same needs to be altered. His grievance is that it is unbelievable to accept that his date of birth is 21.12.1945 on the face of the date of birth of his immediate elder brother Bhimsen Gochhayat being 25.02.1946. It has been admitted by him that when this fact came to his notice, he took up the matter with the authorities of the Board of Secondary Education, Orissa for change of his wrongly recorded date of birth in the Matriculation certificate. It is his case that since no tangible

result was forthcoming from the competent authorities of the Board of Secondary Education, Orissa, after obtaining certified copy of the date of birth register, he approached his employer for change correction of his date of birth from 21-12-1945 to 21.04.1948. Before receipt of any reply on his representation, when he was noticed to retire from service, he approached this Tribunal in OA No. 968 of 2005 of 2005, praying for direction to the Respondents to change the wrong entry of his date of birth. As an ad interim measure, he has also sought for stay of the order of retirement. Since it was noticed that the Applicant was asked to retire while his representation for change of birth was lying with the authorities, this Tribunal in order dated 26.05.2006 directed to take a view on the pending representation of applicant. The representation of applicant was rejected under Annexure-A/7 dated 30.06.2006. Alleging unjust consideration of his grievance inasmuch as without paying attentions to the documents relied on by him in his representation and without taking note of the Government of India's instructions on the subject, he being a SC candidate has been victimized in the matter, the Applicant has preferred this OA under section 19 of the Administrative Tribunal Act, 1985 praying to quash the order of rejection and direct the Respondents to his recorded date of birth from "21-12-1945" to "21.04.1948".

5. During hearing, Learned Counsel for the Applicant has assiduously argued that since, the Respondents rejected the grievance of applicant without placing reliance on the documents submitted by him through his representations and without paying any attention to the Government of India's instructions on the subject, let a direction be given to the Respondents to reconsider the same.

On the other hand, Learned Additional Standing Counsel strongly opposed the said submission of the Applicant on the ground that the date of birth of the Applicant was recorded in the service record as per the declaration given by him which is supported by documents i.e. Matriculation Certificate. According to him, as per the Government of India's instructions prayer for change of date of birth is acceptable if it is made within five years of the entry into service; whereas in the present case, he has prayed for change of his alleged wrong entry of date of birth at the fag end of service which is clearly prohibited as per the decisions of the Hon'ble Supreme Court. He has therefore, prayed that since the grievance of applicant has already received consideration and the same was rejected, there is no reason to again remand the matter for giving fresh consideration on the representation of the Applicant.

6. Going through the submissions of the parties and materials placed on record, I find substantial force in the argument of the Learned

ASC that it is meaningless to remand the matter to Respondents once again for giving due consideration on the representation of the Applicant; because it is an admitted fact that the Applicant has submitted his representation at the fag end of his service. It is not in dispute that the date of birth was recorded in the service sheet based on the Matriculation Certificate furnished by the Applicant. Applicant did not furnish any convincing reply as to why he kept quite for such long time, when according to him, there was anomaly in the recording of his date of birth in the Matriculation Certificate. Laches and delay have been considered to be an important factor in exercise of discretionary relief under section 19 of the A.T.Act, 1985. When a person is not vigilant of his rights and acquiesces with the situation, he has no right to claim for change of date of birth at the fag end of his service. The Applicant is responsible for the delay since he has acquiesced in accepting the entry of his date of birth and did not challenge the same in time. If he would have been vigilant enough he could have filed representation soon after his entry into service. Therefore, whenever it appears that the claimant lost time or whiled it away and did not rise to the occasion in time, as per the law of the land and the Government of India instructions he/she loses the right to exercise.

Substantial right to seek change of date of birth of an employee came up for consideration before the Hon'ble Apex Court in the case of **Union of India v. Harnam Singh, (1993) 24 Administrative Tribunals Cases 92**. While answering the rights of a Government Servant in such matter, it was observed that it is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government Servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government Servant can be entertained. A Government Servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their

rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. A public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. Request for change of date of birth recorded in service record based on the Matriculation Certificate, at the fag end of service, is not permissible has been held by the Hon'ble Apex Court in the case of **Hindustan Lever Ltd. v. S.M. Yadhav, AIR 2001 SC 1666**. When there is nothing to show that entry in school leaving certificate was incorrect, extract from birth register produced subsequently which is also doubtful cannot be relied upon to correct date of birth (**Commissioner of police, Bombay v. Bhagwan v. Lahane, AIR 1997 SC 1986**). A Court or Tribunal at the belated stage cannot entertain a claim for the correction of the date of birth duly entered in the service record (**Union of India v. Ram Suia Sharma, 1996 SCC (L&S) 605**). Where the alteration was sought at the fag end of the career and no application was made within five years of notification prescribing the procedure to seek alteration of date of birth, interim order allowing the employee to continue in employment till the disposal of writ petition was held invalid,

(Visakhapatnam Dock Labor Board v. E. Atchanna, 1996 SCC (L&S)

526). Directing change of date of birth on a belated application of an employee has been held to be bad in law by the Hon'ble Supreme Court in the case of **Union of India v. Miss Saroj Bala, AIR 1996 SC 1000**. It was held by the Hon'ble Apex Court in the case of **State of Uttar Pradesh v. Harendra Kunwar, 1995 Lab IC 2471**, that court should deter people from questioning the date of retirement at belated stage otherwise that tendency to bring such cases and reap the benefit under interim order will not be controlled.

7. In the present case, as discussed above, it is not in dispute that the authorities recorded the date of birth of applicant on the basis of the Matriculation Certificate furnished by the applicant. It is also not in dispute that he raised the claim after long lapse of time i.e. on his verge of retirement. Therefore, whatever self supporting materials were placed by the Applicant are of no help, his request being time barred.

8. Under the circumstances stated above, I find no merit in this OA which stands dismissed by leaving the parties to bear their own costs.


(B.B. MISHRA)
MEMBER(A)